

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

COLTON TITSWORTH,

Plaintiff

v.

J. WILSON, *ET AL.*,

Defendants.

§
§
§
§
§
§
§
§

Civil Action No. 5:21-CV-00123-RWS-JBB

ORDER

Plaintiff Colton Titsworth, proceeding *pro se*, filed the above-captioned civil action complaining of alleged violations of his constitutional rights. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff was ordered to pay the filing fee of \$402.00 or to seek leave to proceed *in forma pauperis* in accordance with 28 U.S.C. § 1915(b). Docket No. 2. By separate order, Plaintiff was directed to file an amended complaint setting out a short and plain statement of his claims. Docket No. 3. When Plaintiff received these orders but did not respond to them (*see* Docket No. 6), the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Docket No. 7. A copy of this Report was sent to Plaintiff at his last known address, but no objections have been received, nor has Plaintiff contacted the Court in any way since November 2021. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Co. of Canada*, 931 F.3d 412, 420-21 n.9 (5th Cir. 2019).

Because no objections have been filed, Plaintiff is barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions, and recommendations; and, except upon

grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report and Recommendation of the Magistrate Judge. Upon such review, the Court has determined that the Report and Recommendation of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report and Recommendation are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report and Recommendation of the Magistrate Judge (Docket No. 7) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-captioned case is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that any pending motions in the above-captioned case are **DENIED**. A final judgment will be entered in this case in accordance with this Order.

So ORDERED and SIGNED this 23rd day of October, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE